

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 250 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LAXMIBEN W/O JAVAN JIVA CHHARA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 20/07/98

ORAL JUDGEMENT

The Commissioner of Police, AHmedabady city, has passed an order dated 8.1.1998 under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985, detaining the petitioner. The said order of detention is challenged in this petition under Article 226 of the ConStitution of India.

In the grounds of detention supplied to the

petitioner, the detaining authority has placed reliance on five prohibition cases registered against the petitioner, four out of which are pending for trial while in one case investigation is in progress. Besides this prohibition cases, a further reliance is placed on two unregistered cases as alleged by the witnesses for the alleged incidents dated 13.12.97 and 16.12.97 when the witness refused the petitioner to store the quantity of liquo in his house, and on another incident, the petitioner started quarrel with the witness on the suspicion that the witness is preventing the cutomers of the petitioner. On both the occassions, the witnesses were dragged on the public road and were beaten. In both the incidents, the crown gathered and petitioner ran towards the crowd with the open knife, with the result, the crown started running helter-skelter and an atmosphere of terror has been created. Considering this material, the detaining authority has recorded a finding that the petitioner is a bootlegger within the meaning of sec. 2(b) of the Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention order is necessary.

This petition is required to be allowed in view of the decision of the Supreme Court in Piyush Kantilal Mehta vs. Commissioner of POlice, Ahmedabad city, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. IN view of this, the order of detention is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 8.1.1998 is set aside. The petitioner is ordered to be released forthwith, if he she is not required for any other lawful reason. RULe made absolute.
